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Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

SCOTT McLAUGHLIN, et al.,

Petitioner,

v.

NORTH CAROLINA BOARD OF ELECTIONS, et al.,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF OF THE COMMITTEE FOR PARTY RENEWAL AS AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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All parties to the instant cause have consented to the filing of this brief of the Amicus Curiae as evidenced by the filing of the Consent to Filing of Brief Amicus Curiae herein.

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INTEREST OF THE AMICUS CURIAE

The Committee for Party Renewal is a voluntary, bipartisan association of some 500 political scientists and practitioners committed to strengthening political parties in the United States. Since its inception in 1975, the Committee has worked towards revitalizing and rebuilding political parties. This effort is founded in the belief that political parties are essential to unify and give coherence to the American political system, and to maintain an effective democracy. As part of its goal, the Committee has urged that minor political parties, as well as the two major parties, be able to compete freely in U.S. elections. The Committee's Principles, published in 1977, hold that "without parties there can be no organized and coherent politics. When politics lacks coherence, there can be no accountable democracy. Parties are indispensable to the realization of democracy."

SUMMARY OF ARGUMENT

This Court has long recognized that state restrictions on ballot access and retention burden both "the rights of individuals to associate for the advancement of political belief, and the right of qualified voters . . . to cast their votes effectively." *Anderson v Celebrezze*, 460 U.S. 780, 787 (1983). However, although the Court has decided many cases dealing with ballot access restrictions, the Court has never directly addressed the issue of ballot retention standards.

States such as North Carolina have justified high ballot retention standards by citing the need for orderly

elections and the need to prevent voter confusion, ballot overcrowding, and the elimination of "frivolous" candidacies. *Munro v Socialist Workers Party*, 479 U.S. 189 (1986). However, in those states with ballot retention standards of ten percent or more, such as North Carolina, more than forty percent of all state legislative elections are going uncontested. Incumbent legislators have imposed ballot retention standards, often coupled with difficult ballot access petition requirements, as in North Carolina, which have gone beyond a legitimate interest in orderly elections and which have had the effect of eliminating political competition. Nationwide, more than one-third of all state legislative races are routinely uncontested. Ballots are not overcrowded. They are undercrowded.

North Carolina has imposed a retention requirement of ten percent, which must be won in one of the races in which third parties are least likely to poll ten percent of the votes, even though they may poll far more than ten percent of the vote in many other races. Not only most states, but other western democracies, recognize that parties which poll far less than ten percent of the vote are a significant part of the democratic system.

The Court should grant the Petition in order to address for the first time the issue of ballot retention requirements, and to examine both the state interest in restrictive ballot access laws, and the burden on First and Fourteenth Amendment rights, in light of the demonstrable undercrowding of state election ballots.

ARGUMENT FOR ALLOWING THE WRIT

I. THE COURT SHOULD GRANT THE PETITION IN ORDER TO CONSIDER, FOR THE FIRST TIME, A CHALLENGE TO BALLOT RETENTION LEVELS

This Court has long recognized that state restrictions on ballot access and retention burden both "the rights of individuals to associate for the advancement of political belief, and the right of qualified voters, regardless of political persuasion, to cast their votes effectively." *Anderson v Celebrezze,* 460 U.S. 780, 787 (1983). Moreover, the right to vote is "heavily burdened if that vote may be cast only for one or two parties at a time when other parties are clamoring for a place on the ballot." *Williams v Rhodes,* 393 U.S. 23, 31 (1968).

In the twenty-eight years since *Williams v Rhodes,* the Court has gradually fleshed out the permissible boundaries of legislative action pertaining to a variety of state ballot access restrictions, including total signature requirements for obtaining a place on the ballot, *Munro v Socialist Workers Party,* 479 U.S. 189 (1986); *American Party of Texas v White,* 415 U.S. 767 (1974); distribution of signature requirements across state counties, *Moore v Ogilvie,* 394 U.S. 814 (1969); early deadlines for filing, *Anderson v Celebrezze,* 460 U.S. 780 (1983); filing fees, *Lubin v Panish,* 415 U.S. 709 (1974); "sore loser" laws, *Storer v Brown,* 415 U.S. 724 (1974); and anti-communist oaths, *Communist Party v Whitcomb,* 414 U.S. 441 (1974).

In *Jenness v Fortson,* 403 U.S. 431 (1971), the Court noted in dicta that Georgia's twenty percent retention level was not impermissible within the context of a ballot access system that, the Court found, did not "operate to

freeze the status quo." *Id.* at 438. However, the challenge in *Jenness* was not to the retention level, but to the petition level, which the petitioners had failed to meet. In *Williams v Rhodes*, on the other hand, the Court struck down Ohio's entire ballot access scheme even though the retention level was just ten percent (the Ohio legislature then lowered the retention level to five percent). Again, however, the specific challenge in *Williams v Rhodes* was to the petition requirement, not to the retention level.

In short, despite dicta running both ways, the Court has never determined whether or not there are levels for a party to retain automatic ballot status beyond which a state may not constitutionally go. *McLaughlin v North Carolina Board of Elections* provides an excellent vehicle for providing state legislatures and lower courts with such guidance.

II. THE COURT SHOULD GRANT THE PETITION IN ORDER TO CONSIDER, FOR THE FIRST TIME THE BURDEN OF BALLOT ACCESS RESTRICTIONS ON VOTER RIGHTS, AND THE STATE INTEREST IN THOSE RESTRICTIONS, IN LIGHT OF A GROWING NATIONAL PROBLEM OF UNDERCROWDED BALLOTS.

A. Voters in North Carolina and elsewhere are increasingly denied any meaningful vote due to a limited number of candidates.

Ballot access restrictions may be justified by a state's interest in preventing voter confusion, avoiding ballot overcrowding, and eliminating "frivolous" candidacies. *Munro v Socialist Workers Party*, 479 U.S. at 195. However,

the Court has equally recognized that the restrictions which may be placed on voters are limited. "The inquiry is whether the challenged restriction unfairly or unnecessarily burdens the 'availability of political opportunity.' " *Anderson v Celebrezze,* 460 U.S. at 793 (footnote omitted). Restrictions which place "severe" burdens upon fundamental constitutional rights are subject to strict scrutiny, and so must be narrowly drawn to advance a state interest of compelling importance. *Burdick v Takushi,* 504 U.S. 428 (1992). The Court of Appeals found that the burden placed on Constitutional rights by North Carolina's ballot access laws are "undoubtedly severe," thus making strict scrutiny appropriate in this case. *McLaughlin v North Carolina Board of Elections,* 65 F.3d 1215, 1221 (4th Cir. 1995).

In upholding the North Carolina statutory scheme, neither the district court nor the court of appeals considered the validity of the state interest in light of the state's demonstrably *undercrowded* ballots. In fact, in North Carolina and throughout the country, large numbers of races go totally uncontested.

In the general elections of November 1994, 170 North Carolina legislative seats were up for election. There were no third party candidates for any office on the ballot, and only one independent candidate for any state or federal office. Furthermore, there were 27 instances in which the Democrats failed to nominate for a legislative seat, and 51 instances in which the Republicans failed to nominate for a legislative seat. *Dems., Reps. Failed to Nominate in '94,* Ballot Access News, June 1, 1995 at 5 (attached as Appendix A). Thus, altogether 78 of 170 seats for the North

Carolina legislature went uncontested. For 1996, according to the official list of primary candidates for the legislature, no Democrat filed for 26 seats and no Republican filed for 28 seats, for a total of 54 seats with no Democrat-Republican contest.

This problem of undercrowded ballots is not limited to North Carolina. Nationwide, in the 45 states which elected legislatures in 1994, thirty-six percent (2,209 of 6,167) of all regularly-scheduled state legislative elections were uncontested by one of the two major parties. *Id.* These numbers are not atypical – in 1992, 33% of regularly-scheduled elections for state legislatures had no major party contest. In 1990, the figure was 36%, and in 1988, 37%. *Id.* Furthermore, in states with ballot retention levels of ten percent or more, such as North Carolina, the problem is most acute: in Alabama, Georgia and Oklahoma, each with a retention level of ten percent or more for the legislature[1], more than half of all state legislative elections were not contested by at least one major party in 1994. *Id.* These figures are powerful evidence that state legislative bodies have gone far beyond the level necessary to prevent voter confusion and overcrowding of state election machinery.

"(V)oters can assert their preferences only through candidates or parties or both." *Lubin v Panish*, 415 U.S. at 716. Voters who are presented with only one candidate at the time of the general election cannot, realistically, assert

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[1] See Ala. Code § 17-16-2 (1995); Ga. Code Ann. § 21-2-2(21) (Supp. 1995); Okla. Stat. Ann. tit. 26, § 1-109 (1991).

any preference. Their right to vote has become meaningless. This Court has been appropriately cautious about interjecting itself into issues of apportionment and the distribution of political power. Nevertheless, the Court has not feared to step in when it appears that the "ins" are attempting to use the state's electoral machinery to deny an effective voice to the "outs". *See, e.g., Gomillion v Lightfoot,* 364 U.S. 339 (1960) (striking down effort to redraw city boundaries to exclude black voters); *Reynolds v Sims,* 377 U.S. 533 (1964) (requiring legislature to reapportion districts); *Harper v Virginia Board of Elections,* 383 U.S. 663 (1966) (striking down poll tax); *Williams v Rhodes,* 393 U.S. 23, 31-32 (1968) (striking down Ohio statute that locked in Republicans and Democrats to exclusion of other parties); *Kramer v Union Free School District No. 15,* 395 U.S. 621 (1969) (restriction of voting to those owning or leasing taxable property within district, or with children in local schools, was unconstitutional); *Davis v Bandemer,* 478 U.S. 109 (1986) (recognizing partisan gerrymandering as a justiciable issue).

The North Carolina state legislature, and the legislatures in many other states, all made up of Republicans and Democrats, are asserting state interests in maintaining statutory schemes which limit access to the ballot, even though more than one-third of their members in any given election year will face no ballot competition at all. Because of the legislature's direct self-interest in raising ballot access restrictions above that needed for legitimate state interests, it is incumbent on the court to review such activity under the highest level of scrutiny. The problems presented by high retention levels are not subject to self-correction because of the distorting effect such laws have

on the democratic process. Voters are unlikely to unseat legislators who support high retention levels because the laws deny them any alternative candidates to choose from. Legislators are unlikely to build coalitions with opponents of high retention standards because the purpose of lowering the retention standard is to be able to vote for candidates other than those already in office. Thus, the court should assure not only that no one is denied an effective vote for no reason, but that there ought to be a very convincing reason for burdening the right to vote.

B. North Carolina ballot access and retention requirements are significantly responsible for the problem of undercrowded ballots.

Third party activity can help to ameliorate the problem of uncontested legislative elections. However, the North Carolina ballot access laws have worked to quash third party (and independent) political activity.

A court should review the effect of ballot access restrictions "as a whole". *Williams v Rhodes*, 393 U.S. 23 at 34. Thus, although the requirements to get a new party on the ballot in North Carolina are not being challenged, it is relevant that they are so severe.

North Carolina's two percent petition requirement is higher than most states; after California and Florida, North Carolina requires more signatures than any other state for a new party to qualify for the presidential ballot (see Appendix B). Under the current law, passed in 1983, only two third parties have successfully petitioned in North Carolina: the New Alliance Party in 1988, and the

Libertarian Party in 1992 (although the Socialist Workers and Libertarian Parties appeared on the ballot in 1984, they did so by virtue of completing the old 5,000-signature petition before the 1983 law went into effect). None of these parties was able to retain ballot status, through vote totals or petition, in the next election. *See McLaughlin v North Carolina Board of Elections*, 850 F. Supp. 373, 377-78 (M.D.N.C. 1994).

In addition to imposing difficult petitioning requirements, North Carolina is one of only eight states requiring vote totals in excess of five percent to retain automatic ballot status (see Appendix C).[2] In nations with "winner-take-all" elections, such as the United States, it is particularly difficult for any third party to poll ten percent in a statewide race. This is because winner-take-all election systems invariably lead to a two-party system. *See, e.g.*, Douglas Rae, The Political Consequences of Electoral Laws 92 (1971). Because a party gets nothing until it can carry a plurality within an electoral unit, the system creates a strong incentive for parties to coalesce until only two major parties are left. Similarly, voters have a powerful incentive to vote only for a candidate who "can win". *Id.* at 94-95. Voters who are not intensely attracted to a candidate's principles will, in a three or more candidate race, tend to vote for one of the two candidates considered to have the best chance to win, though that candidate would not otherwise be their first choice. At the level of a gubernatorial race, where the two major parties

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[2] Georgia requires a 1% vote retention for a party to remain qualified for statewide office, but a 20% vote retention for a party to remain qualified for district and county office.

always compete, this makes it extremely unlikely that a third party will attract as much as ten percent of the vote. This is true even though that party might gain twenty or more percent of the vote, and even elect individuals to lower offices, particularly where the race would otherwise go uncontested.

Therefore, when a state such as North Carolina sets its retention requirement at ten percent of the gubernatorial total, it virtually guarantees that third parties will not be able to retain a place on the ballot for any office. This means that these parties will be forced to repetition, election after election, even to appear on the ballot. This is true so long as their gubernatorial candidate is kept below ten percent, even though the third party might even be able to elect members of the legislature in some districts. If the petition requirement to get on the ballot were lenient, the problem of retention would not be so serious. But in a state such as North Carolina, where more than 50,000 signatures are required by a mid-May filing date, the combination of difficult petitioning standard and high retention standard means that, invariably, there will be few or no third parties on the ballot to provide competition, despite the fact that one or the other major party fails to run a candidate in forty percent of state legislative races. Even third parties which are capable of completing the petition requirement are generally exhausted by the need to submit the petition repeatedly. Consequently, even those with some significant support will, over time, tend to cease to appear on the ballot.

Most states understand that third parties, though they provide active competition in some districts and an

important outlet for disgruntled voters elsewhere, cannot poll ten percent of the vote for an important statewide office. Thus, most states set the retention requirement considerably below ten percent. Indeed, most states recognize that a third party capable of polling two to three percent deserves automatic ballot status in the next election. See Appendix B.

Similarly, other western democracies invariably recognize that parties which poll less than ten percent of the vote may be significant. All but two countries in Europe use proportional representation, and all countries wholly in Europe which use proportional representation provide for representation in legislative bodies for parties which poll five percent or less. See Matthew Cossolotto, The Almanac of European Politics (1995). This is not to suggest that the United States ought to adopt proportional representation; rather, the above simply makes clear that not only in this country, but throughout Europe, parties are considered significant even though they may poll far less than ten percent of the vote.

North Carolina's combination of a high retention level and difficult petitioning standard has significantly restricted the political participation of third parties and those voters who would vote for them. As a result, there are seldom any third party candidates for the legislature on the North Carolina ballot. The North Carolina legislative scheme seems designed to quash all third party and independent political competition, and not merely to protect the state's legitimate interest in preventing voter confusion and overcrowded ballots. As a result, the state's voters suffer when so many state legislative elections are one-candidate elections. This severe burden on

voter rights is not matched by any legitimate state interest.

This Court should grant McLaughlin's Petition for a Writ of Certiorari. The Court has never considered the question of how much support a third party may be required to demonstrate in order to remain on the ballot for the next election, and has never considered ballot access requirements in light of the ballot undercrowding that has resulted in uncontested elections for more than one-third of all state legislative seats in the United States.

CONCLUSION

For the foregoing reasons, Amicus Curiae respectfully requests that this Court grant the petition and issue a writ of certiorari to review the judgment of the Fourth Circuit affirming the judgment of the District Court.

Respectfully Submitted,

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DEMS, REPS FAILED TO NOMINATE IN '94

(reprinted from *Ballot Access News*, issue of June 1, 1995, Vol. 11, No. 3)

In the November 1994 elections, either the Republicans or the Democrats failed to run a candidate in 35.8% of all state legislative contests. 1994 was not atypical. In 1992, there was no Democrat or no Republican in 32.8% of the regularly-scheduled state legislative races; in 1990, 35.9%; in 1988, 36.6%.

STATE	SEATS UP	NO DEM.	NO REP.
Alabama	140	14	60
Alaska	50	6	6
Arizona	90	29	18
Arkansas	118	8	67
California	100	0	4
Colorado	83	9	8
Connecticut	187	14	12
Delaware	51	11	13
Florida	142	33	40
Georgia	236	51	109
Hawaii	65	1	20
Idaho	105	52	7
Illinois	139	17	21
Indiana	149	25	15
Iowa	125	32	21
Kansas	125	22	17
Kentucky	119	20	52
Maine	186	17	22
Maryland	188	3	42
Massachusetts	200	20	92
Michigan	148	0	2
Minnesota	136	10	2
Missouri	180	28	40
Montana	128	11	16
Nevada	53	6	6
New Hampshire	424	72	66
New Mexico	71	10	27
New York	211	22	20
North Carolina	170	27	51
North Dakota	122	11	9
Ohio	116	7	4
Oklahoma	125	20	44
Oregon	75	6	7
Pennsylvania	228	40	39
Rhode Island	150	10	60
South Carolina	124	41	43
South Dakota	105	19	14
Tennessee	116	22	35
Texas	181	43	71
Utah	91	13	4
Vermont	180	18	31
Washington	122	12	8
West Virginia	119	5	37
Wisconsin	116	27	21
Wyoming	78	33	9
TOTAL	6,167	897	1,312

Louisiana, Mississippi, Nebraska, New Jersey and Virginia did not elect partisan legislators in 1994 and are omitted.

When any major party nominee captured the opposing major party's nomination as well as his or her own party's nomination, the opposing party is considered not to have a nominee. This happened only in California, New Hampshire, New York, Pennsylvania and Vermont.

APPENDIX B

1996 BALLOT ACCESS HURDLES FOR A NEW PARTY PRESIDENTIAL CANDIDATE

STATE	LEGAL REQUIREMENT	ELECTION CODE REFERENCE		REQUIRED	%
Ala	1% of 1994 gub vote	17-8-2.1		35,973	1.62
Alas	1% of 1992 pres. vote	15.30.025		2,586	.77
Az	1 & 1/3% of 1994 gub. vote	16-801		15,062	.73
Ark	just hold meeting	Att. Gen. Op. 79-102		0	.00
Cal	1% of 1994 gub. vote	elec. code 6430(b)	(reg.)	89,006	.60
Colo	number stated in law	1-4-801(b)		0	.00
Ct	number stated in law	9-453(d)		7,500	.40
Del	.05% of Dec 1995 registration	Title 15, sec 3001	(reg.)	191	.06
Fla	1% of no. of reg. voters as of 1994	103.021(3)		65,596	1.00
Ga	1% of no. of reg. voters as of 1994	21-2-180		30,036	1.00
Hi	1% of no. of 1992 vote cast	Tit. 2, 11-113b(2)(B)		3,829	.78
Id	2% of 1992 pres. vote	34-501(1)(c)(D)		9,644	1.54
Il	number stated in law	Ch. 46, sec. 10-2		25,000	.41
In	2% of 1994 sec of state vote	3-8-6-3		29,822	.97
Io	number stated in law	Title 4, sec. 45.1		1,500	.09
Kan	2% of 1994 gub. vote	25-302(a)		16,418	1.25
Ky	number stated in law	Title 10, sec. 118.315(2)		5,000	.23
La	just pay $500; no petition needed	Title 18, sec. 465C		0	.00
Me	number stated in law	Title 21, sec. 494.5		4,000	.44
Md	number stated in law and A.G. Op.	Att. Gen. Op. Jan. 6, 1984		10,000	.42
Ma	number stated in law	Chap. 53, sec. 6		10,000	.32
Mi	1% of 1994 gub. vote	168.685(1)		30,891	.50
Mn	number stated in law	204B.08		2,000	.07
Ms	just be organized	23-15-1059		0	.00
Mo	number stated in law	Tit. 9, sec. 115.321		10,000	.34
Mt	5% of 1992 gub. winner's vote	13-10-601		10,471	2.04
Neb	1% of 1994 gub. vote	32-526		5,741	.62
Nev	1% of 1994 congress vote	Tit 24, sec 293.1715		3,761	.60
N H	number stated in law	Title 4, sec. 655:42		3,000	.45
N J	number stated in law	19:13-5		800	.02
N M	1/2 of 1% of 1994 gub. vote	1-8-2.B & 1-7-2.A		2,339	.33
N Y	number stated in law	Chap. 17, sec. 6-142		15,000	.17
N C	2% of 1992 gub. vote	163-96(2)		51,904	1.43
N D	number stated in law	16.1-12-02		7,000	1.51
Oh	1% of 1994 gub. vote	3517.01		33,463	.54
Ok	3% of 1992 pres. vote	Title 26, sec. 10-101.2		41,711	2.04
Ore	1.5% of 1994 gub. vote	Tit 23, sec. 248.008(a)		18,316	1.02
Pa	2% of 1995 judge winner's vote	Title 25, sec. 2911		24,425	.42
R I	number stated in law	17-14-7		1,000	.18
S C	number stated in law	7-9-10		10,000	.67
S D	2.5% of 1994 gub. vote	12-5-1		7,792	1.80
Tn	2.5% of 1994 gub. vote	2-1-104(28)(B)		37,179	1.39
Tx	1% of 1994 gub. vote	Elec. code 181.005		43,963	.51
Ut	number stated in law	20-3-38		300	.03
Vt	number stated in law	Title 17, sec. 2402(b)		1,000	.27
Va	one-half of 1%, no. reg. voters, Jan.	24.1-159		15,168	.50
Wa	number stated in law	29.24.030		200	.01
W V	1% of 1988 pres. vote	3-5-23		6,837	.77
Wis	number stated in law	Title 2, sec. 8.20(4)		2,000	.06
Wy	number stated in law	22-4-402(d)		8,000	3.36
DC	1% of no. of reg. voters, July 1996	1-1308(f)	(es)	3,500	.97

"Requirement" shows the number of signatures or registrants to get a new party presidential candidate on the November ballot. "%" means the requirement, divided by the number of registered voters as of fall 1994. All procedures listed above permit the party name to be printed on the ballot. Chart prepared Feb. 15, 1996.

APPENDIX C

WHAT MUST A PARTY DO TO NOMINATE WITHOUT PETITIONING?

State	Must Poll for Which Office?	How Many Votes Needed?	History	Code Cite
Ala	any statewide	20%	1898	17-16-2
Alas	Governor	3%	1994	15.60.010
Az	President or Governor	5% (or have 2/3 of 1% reg.)	1982	16-804A
Ark	President or Governor	3%	1992	7-1-101(1)
Cal	any statewide, gub years	2% of voters who vote	1994	5100a
Colo	Governor	10%	1914	1-1-104(18)
Ct	any (each office separate)	1%	1994	9-372(f)
Del	party's vote irrelevant	must have reg of .05%	1994	3001
Fla	party's vote irrelevant	must have reg. of 5.0%	never	97.021(14)
Ga	any statewide	1% of all voters	1994	21-2-180(2)
Hi	party's vote irrelevant	must have been on 3 elections	1994	11-62(d)
Id	party's vote irrelevant	must have run 3 candidates	1994	34-501(1)(a)
Il	any statewide	5%	1994	10-2
In	Secretary of State	2%	1994	3-8-7-25
Io	President or Governor	2%	1968	43.2
Kan	any statewide	1%	1994	25-302(b)
Ky	President	2%	1980	118.325
La	President	5%	1992	441
Me	President or Governor	5%	1994	321.1
Md	party's vote irrelevant	must have reg. of 10.0%	never	Art 33, 5-1
Ma	any statewide	3%	1994	50-1
Mi	cand. closest to top of ballot	1% of Sec St winner's vote	1994	168.685(3)
Mn	any statewide	5%	1994	200.02.7
Ms	party's vote irrelevant	must be organized	1994	23-1-81(c)
Mo	any statewide, either of last 2	2%	1994	115.013(10)
Mt	any statewide, either of last 2	5% of Gub winner's vote	1994	13-10-601
Neb	President or Governor	5%	1968	32-521
Nev	any	1% of Congress vote	1994	293.1715
N H	any statewide	3% of Gubernatorial vote	1994	652:11
N J	average of assembly cand.	10%	1913	19:1-1
N M	any statewide, either of last 2	.5% of Gub. or Pres. vote	1994	1-7-2(C)
N Y	Governor	poll 50,000 votes (aprox 1%)	1994	1-104.3
N C	President or Governor	10%	1968	163-96(1)
N D	Governor	5%	1914	16.1-11-30
Oh	President or Governor	5%	1968	3517.01
Ok	President or Governor	10%	1968	1-109
Ore	any statewide	1% of Congress vote	1994	248.008(2)
Pa	party's vote irrelevant	must have reg. of 15.0%	never	2872.2(a)
R I	Governor	5%	1994	17-1-2(f)
S C	party's vote irrelevant	must run at least 1 candidate	1994	7-9-10
S D	Governor	2.5%	1994	12-1-3(3)
Tn	any statewide	5%	1968	2-104(27a)
Tx	any statewide	5% (or, 2% for Governor)	1994	181.005(b)
Ut	any	2% of Congress vote	1994	20-3-2(g)
Vt	party's vote irrelevant	must be organized 15 towns	1994	2103(23)
Va	any statewide, either of last 2	10%	1994	24.1-1(7)
Wa	any statewide	5%	1968	29.01.090
W V	Governor	1%	1924	3-1-8
Wis	any statewide, either of last 2	1%	1994	5.62(1b)
Wy	Congress	3%	1994	22-4-301
DC	any districtwide	poll 7,500 votes (aprox 3%)	1994	1-1108h(2)

Only 4 states have a retention requirement based on a party's registration, whereas 41 states & D.C. have a retention requirement based on how many votes a party polled. Threefore, the chart is oriented toward votes. "History" column tells the last year in which any third party met the current standard. No third party in any state has held even 5% of that state's registration, since 1912. There was no such thing as registration data for parties before 1900, since there were no state-conducted party primaries until the 20th century. Chart prepared Feb. 15, 1996. In Georgia, a party which polls a number of votes for any statewide office equal to at least 1% of the number of registered voters, is automatically on the ballot in the next election only for statewide office. To be on automatically for district and county office, it must poll 20% for Governor or for President in the entire U.S.